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And Linda Johnson Rice*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE TESLA, INC. SECURITIES
LITIGATION

Case No. 3:18-cv-04865-EMC

**DEFENDANTS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
DOCUMENTS IN SUPPORT OF THE
MOTIONS *IN LIMINE***

1 **I. INTRODUCTION**

2 Pursuant to Northern District of California Civil Local Rules 7-11 and 79-5, Defendants Tesla,
3 Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch,
4 Kimbal Musk, and Linda Johnson Rice (together, “Defendants”) hereby present their Administrative
5 Motion to File Under Seal (“Motion to Seal”) various confidential exhibits contained in the Parties’
6 Motions *In Limine*. (Dkt. 448, 448-1, 450, 450-1, 451, 451-1, 452, 452-1). Specifically, Defendants
7 present this motion as to Exhibits 44-47 contained in Plaintiff’s Opposition to Defendants’ Motion *In*
8 *Limine* No. 3. (Dkt. 452-1 at 5). Pursuant to Civil Local Rule 79-5, this Motion is accompanied by a
9 Proposed Order, Declaration of Nathaniel Smith, and Exhibits 44-47.

10 **II. BACKGROUND**

11 On July 1, 2022, the Parties filed their early Motions *In Limine* and the Oppositions thereto.
12 (Dkt. 448, 448-1, 450, 450-1, 451, 451-1, 452, 452-1). In conjunction with Plaintiff’s Opposition to
13 Defendants’ Motion *In Limine* No. 3 to Preclude Evidence or Argument Concerning an Unpled
14 August 13 Purported Misrepresentation (Dkt. 452-1), Plaintiffs cite four exhibits marked Confidential
15 (Exhibits 44-47) subject to the Protective Order in this case. (Dkt. 255). The Court has previously
16 granted Tesla’s Administrative Motion to Seal these same exhibits. (Dkt. 432).

17 **III. ARGUMENT**

18 In the Ninth Circuit, the common law right of access to judicial proceedings “is not absolute
19 and can be overridden given sufficiently compelling reasons for doing so.” *Foltz v. State Farm Mut.*
20 *Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). Under the compelling reasons standard, the
21 Court must balance the harm that would result to the party seeking to seal the information against “the
22 general history of access and the public policies favoring disclosure, such as the public interest in
23 understanding the judicial process.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79
24 (9th Cir. 2006) (internal quotations omitted). Courts have found that compelling reasons exist to
25 protect “any . . . compilation of information which is used in one’s business, and which gives him an
26 opportunity to obtain an advantage over competitors who do not know or use it.” *Whitewater West*
27 *Indus., Ltd. v. Pac. Surf Designs, Inc.*, No. 3:17-cv-01118, 2018 WL 3055938, at *2 (S.D. Cal. June
28 14, 2018). Courts further recognize that “other sources of business information that might harm a

1 litigant’s competitive standing may also constitute a compelling reason to seal.” *Id.* Importantly,
 2 here, the Court has indicated that materials that would “hinder [Tesla’s] ability to obtain financing, to
 3 court new investors, or to preserve its relationships with existing investors,” may warrant sealing.
 4 (Dkt. No. 387 at 20).

5 The four exhibits at issue are internal third party shareholder reactions to Tesla’s take private
 6 bid and discussions of their ability to participate therein. (*See* Dkt. 429 at 6-8). Courts routinely find
 7 that the sensitivity of such information justifies keeping such information sealed. *See, e.g., Aya*
 8 *Healthcare Servs., Inc. v. AMN Healthcare, Inc.*, No. 17CV205-MMA (MDD), 2020 WL 1911502, at
 9 *3 (S.D. Cal. Apr. 20, 2020) (finding compelling reasons to seal “non-public, confidential
 10 information” concerning “commercial relationships,” “agreements,” and “business dealings” between
 11 the parties); *Network Appliance, Inc. v. Sun Microsystems Inc.*, No. C-07-06053 EDL, 2010 WL
 12 841274, at *4 (N.D. Cal. Mar. 10, 2010) (sealing portions of deposition regarding “future business
 13 plans”); *Microsoft Corp. v. Motorola, Inc.*, No. C10-1823JLR, 2012 WL 5476846 at *4 (W.D. Wash.
 14 Nov. 12, 2012) (sealing content related to company’s “future business plans” and “strategic planning
 15 information”); *In re Qualcomm Litig.*, No. 3:17-CV-0108-GPC-MDD, 2018 WL 6252523, at *2 (S.D.
 16 Cal. May 9, 2018) (sealing information subject to confidentiality agreement because disclosure could
 17 harm the party “in future negotiations with existing customers, third-parties, and other entities with
 18 whom they do business”); *see also Lane v. Wells Fargo Bank, N.A.*, No. C 12-04026 WHA, 2013 WL
 19 2627487, at *3 (N.D. Cal. June 11, 2013) (sealing information that explained relationships with
 20 nonparties); *Snapkeys, Ltd. v. Google LLC*, 2021 WL 1951250, at *3 (N.D. Cal. May 14, 2021)
 21 (compelling reasons exist to seal personally identifiable information).

22 This Court has already found that these four exhibits warrant sealing. (Dkt. 432).
 23 Accordingly, Defendants request that the Court seal these four exhibits (Exhibits 44-47) from the
 24 Parties’ Motions *In Limine* filings. Public disclosure of these confidential, non-public excerpts will
 25 reveal private communications related to Tesla investors’ and shareholders’ investment decisions,
 26 strategies, and feedback, all of which were expressed with the expectation of privacy. The release of
 27 such information publicly could chill future investors’ willingness to speak freely and candidly with
 28 Defendants for fear of their communications being released publicly in the future, harming Tesla’s

1 “ability to obtain financing, to court new investors, or to preserve its relationships with existing
2 investors.” (Dtk. No. 387 at 20).

3 **CONCLUSION**

4 For the foregoing reasons, Defendants respectfully request that the Court grant this
5 Administrative Motion to Seal.

6
7
8 DATED: July 5, 2022

Respectfully submitted,

9 QUINN EMANUEL URQUHART & SULLIVAN, LLP

10 By: /s/ Alex Spiro

11 Alex Spiro (*appearing pro hac vice*)
12 Attorneys for Tesla, Inc., Elon Musk, Brad W. Buss,
13 Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias,
James Murdoch, Kimbal Musk, And Linda Johnson Rice

14 *****

15 I, Kyle K. Batter, am the ECF user whose ID and password are being used to file the above
16 motion. In compliance with Local Rule 5-1(h)(3), I hereby attest that Alex Spiro has concurred in
17 the filing of the above motion.

18 DATED: July 5, 2022

19 QUINN EMANUEL URQUHART &
20 SULLIVAN, LLP

21 By /S/ Kyle Batter

22 Kyle Batter